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No. 83-941

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

IOWA ELECTRIC LIGHT AND POWER COMPANY,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether the Nuclear Regulatory Commission or the National Labor Relations Board should regulate the management structure at petitioner's nuclear power plant.

Whether there is substantial evidence to support the finding that Quality Control Inspectors at petitioner's nuclear power plant are not supervisors or managers.

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ARGUMENT

The NLRB has failed to respond to the first question presented for review. Instead, it has repeated its error and the error of the court of appeals by stating:

> "The court of appeals held that the NRC regulations do not require that inspectors actually be vested with supervisory authority, but only that there be sufficient supervisory authority vested in whatever organizational structure a utility might choose for its quality assurance functions. The court further found that petitioner had *elected* to vest the authority required by the NRC in the quality supervisor, not the inspectors, and that there was no evidence that inspectors actually possessed supervisory or managerial authority." (Emphasis added; brief in opposition, p. 7, footnote 5)

The case depends upon this finding, which is wrong.

IE does not, and cannot, "elect" to vest Quality Control authority in anybody. That decision is made by the NRC. IE must, and does, abide by the NRC regulations.

These regulations are set forth on pages 5, 6 and 7 of IE's petition for writ of certiorari. In summary, they provide that Quality Control Inspectors:

> ". . . shall have sufficient authority and organizational freedom to identify quality problems; to initiate, recommend, or provide solutions; and to verify implementation of solutions. . ." (App. p. F-4)

> ". . . shall *control* further processing, delivery, or installation of a non-conforming item, deficiency, or unsatisfactory condition until proper dispositioning has occurred." (App. p. F-7)

> ". . . shall be capable of *supervising* or maintaining surveillance over the inspections and tests performed by others and of calibrating or establishing validity of calibration of inspections and measuring equipment. He shall have demonstrated proficiency in planning and setting up tests and shall be capable of determining the validity of test results." (App. p. F-8)

> ". . . shall have demonstrated capabilities in planning inspections, examinations, and tests; in setting up tests including preparation and set-up of related equipment, as appropriate; in *supervising or maintaining surveillance* over the inspections, examinations, and tests; *in supervising and certifying lower level personnel*; in reporting inspection, examination, and testing results; and in evaluating the validity and acceptability of inspection, examination, and test results." (App. p. F-9)

As to both questions presented for review, the Acting Regional Director of the NLRB specifically found that, in performing these duties, the Quality Control Inspectors have the power to "halt production," meaning to *shut down the plant*. (App. p. A-6; T. p. 110) If that does not qualify these people as managers or supervisors, one wonders what would.

CONCLUSION

Neither the NLRB nor the court of appeals has given due consideration to the NRC regulations or the facts. Important reasons of public safety require that this court do so.

It is therefore respectfully submitted that IE's petition for writ of certiorari should be granted.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing reply to brief in opposition upon the following persons by mail on March 8th, 1984:

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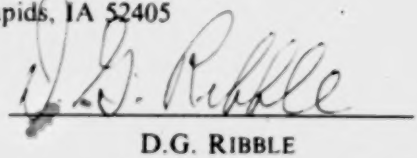

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